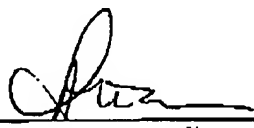


Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) PAT 2151-2							
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Application Number 10 673,480	Filed Sept. 30, 2003								
First Named Inventor Mo-Han FONG									
Art Unit 2617	Examiner Jamie M. HOLLIDAY								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p style="text-align: center;">1</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>									
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. Anne Kinsman Registration number _____ <div style="text-align: center;">Reg. No. 45,291</div> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<div style="text-align: center;">  Signature Anne Kinsman _____ Typed or printed name 613-237-5160 _____ Telephone number June 21, 2006 _____ Date </div>							
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.									
<input checked="" type="checkbox"/> Total of <u>1</u> forms are submitted.									

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JUN 21 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: FONG, Mo-Han; IRAQI, Ali
Serial No.: 10/673,480
Filed: September 30, 2003
Title: MULTI-CARRIER LOAD BALANCING SCHEME FOR VOICE AND
DATA
Group: 2686
Examiner: HOLLIDAY, Jaime Michele
Attorney Ref.: PAT 2151-2 US

June 21, 2006

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Mall Stop AF**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

We submit that this case is appropriate for the pre-appeal process as the Final Action, which is a new ground of rejection, clearly fails to demonstrate a *prima facie* case of obviousness for any of the pending claims, there are clear errors in the rejections, and the rejections omit essential elements for a *prima facie* rejection.

Clear errors suitable for a pre-appeal review include:

- 1) lack of *prima facie* case for rejecting claim 1 in view of Kim et al. (US Pat. No. 6,456,850) and Zdunek et al. (US Pat. No. 4,870,408);
- 2) lack of *prima facie* case for rejecting claims 4 and 10 in view of Kotzin et al. (US Pat. No. 5,796,722) and Zdunek et al..

1) Lack of *prima facie* case for rejecting claim 1

In our response to the Final Action, at pages 3-4, we pointed out that the Examiner's sole purported motivation for combining the Kim et al. reference with the Zdunek et al. reference is "in order to balance call traffic efficiently." Further on page 4, we presented arguments indicating that neither cited reference teaches or suggests all the claimed limitations; that there is no teaching or suggestion in Kim et al. or Zdunek et al. to modify their teachings to arrive at the claimed invention. Even if Kim et al. were modified, there would be

no reasonable expectation of success and such modification would not result in the invention as claimed herein. We direct the pre-appeal panel to those arguments and further point out that Kim et al. is not a load balancing scheme. Rather, Kim et al. is an overload reduction scheme that utilizes call blocking or call dropping during overload conditions. Moreover, Kim et al. utilizes an average loading calculation to formulate a threshold beyond which calls are blocked or dropped. One of ordinary skill in the art would clearly recognize that the average load may be obtained from channels having wildly different loads. In such instances where one channel may have a very low loading and another may have a very high loading, there is no motivation to suggest rebalancing the loading. Rather, Kim et al. will simply block further calls from that channel which exceeds the threshold or drop troublesome calls that are causing overloading.

The Zdunek et al. reference discloses a call admission gating function that is concerned with adding calls and not blocking or dropping calls as in the Kim et al. reference. Combining the Kim et al. and Zdunek et al. references would not only be counterintuitive to one of ordinary skill in the art, but would likely not result in an operative device because each operates in a completely different manner. The Examiner's contention that they may be combined "in order to balance call traffic efficiently" is a blanket assertion with no suggestion or basis whatsoever within either of these two cited references.

In the Continuation Sheet of the Advisory Action dated May 22, 2006, the Examiner contends that "it is inherent to balance the load in the system to prevent an overload condition." Such a statement does not appear to have any basis or suggestion in the cited references. Moreover, Applicants submit that one of ordinary skill in the art would find no "inherent" relationship between balancing a system and preventing overload in a system in light of the Kim et al. call blocking/dropping scheme and the call admission gating scheme of Zdunek et al. Clearly, the Examiner's inherency argument does not support a *prima facie* case of obviousness.

Applicants' claimed invention is a method of balancing voice and data traffic in a wireless communications network by converting the carrier from voice and data traffic to voice-only traffic upon exceeding an established maximum load value. However, the Examiner's cited combination, even if *arguendo* operable, would not form the claimed invention. Zdunek et al. does not function in the manner claimed by the Applicants when load leveling is required due to unbalanced traffic across the channels. Load balancing in Zdunek et al. is accomplished by redistribution of activity across available channels (see Zdunek et al. Col. 8,

line 55 through Col. 9, line 19), rather than conversion of a channel to voice-only traffic upon exceeding a load threshold.

Consequently, Kim et al. and Zdunek et al. fails to teach or suggest all the limitations of the claimed invention, taken alone or in combination. The rejection of claim 1 is therefore clearly erroneous and the rejection should be reversed.

2) Clear error exists as the rejection fails to provide any reasons for rejecting claims 4 and 10.

Applicants' arguments above in regard to Zdunek et al. equally apply and are incorporated herein by reference against the combination of Zdunek et al. and Kotzin et al. as the Examiner has failed to establish a *prima facie* case for rejecting claims 4 and 10. Just as Zdunek et al. fails, Kotzin et al. fails to provide load balancing in the same manner as claimed. Rather, Kotzin et al. employs the use of handoff as a means for balancing call traffic. No mention whatsoever of conversion of a channel to voice-only traffic upon exceeding a load threshold is mentioned in Kotzin et al. as is required by both claims 4 and 10 of the instant application.

In the Continuation Sheet of the Advisory Action dated May 22, 2006, the Examiner further contends that "because the channels were converted when the vocie (sic) and data activity was reallocated to specific channels" this constitutes conversion of a channel to voice-only traffic upon exceeding a load threshold as claimed by claims 4 and 10. Applicants disagree. Again, the Examiner appears to relying on something other than proper motivation to combine the references. Namely, the Examiner is asserting that the Zdunek et al. reference's reallocation of channels will have converted voice and data traffic to voice-only traffic. This is a conclusion without any basis in fact. Moreover, such a statement does not appear to have any basis or suggestion in the cited references.

Consequently, Kotzin et al. and Zdunek et al. fails to teach or suggest the claimed invention taken alone or in combination. The rejection of claims 4 and 10 is therefore clearly erroneous and the rejection should be reversed.

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Pre-Appeal Brief Request for Review dated June 21, 2006

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Conclusion

As each of Claims 1, 4, and 10 are independent claims are believed to be allowable over the cited bases references and the remaining dependent Claims 2-3, 5-9, and 11 each depend directly or indirectly from allowable claims 1, 4, and 10, Applicants respectfully submit that the 103 rejections of Claims 2-3, 5-9, and 11 should also be reversed.

A Petition for a Three-Month Extension of Time is enclosed under separate cover. Applicant authorizes the Commissioner to debit any required fee from Deposit Account No. 501593, in the name of Borden Ladner Gervais LLP. The Commissioner is further authorized to debit any additional amount required, and to credit any overpayment to the above-noted deposit account.

Respectfully submitted,
FONG, Mo-Han et al

By: 

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